



# **The Luxembourg Rail Protocol to the Cape Town Convention on International Interests in Mobile Equipment**

**UN Economic Commission for Europe  
Inland Transport Committee Working Party on Rail  
Transport (SC.2) Seventy-third session  
Geneva, 26th November 2019**

**Howard Rosen Chairman  
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THE 2001 CAPE TOWN CONVENTION  
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT



- Formed in 1996 at the request of UNIDROIT
- Not-for-profit global industry group based in Switzerland
- All officers and members work for free
- Over 70 direct members and hundreds via industry associations
- Over 20 contact groups around the world
- Linking up various industry stakeholders
- Dedicated to the adoption of the Luxembourg Rail Protocol to the Cape Town Convention

# The current funding models

- Public finance
  - ☐ Equity, state loans and grants, aid
- Public Export Finance
  - ☐ ECA, state or para-statal loans or guarantees
- Private investment
  - ☐ Equity and debt for private companies
  - ☐ Secured debt
  - ☐ Leasing
  - ☐ BOT/PPP



# Identifying the trends in the rail sector

- Governments cannot afford the massive investment needed in the railways
- More passenger and freight traffic must be moved to the rails for good environmental and economic reasons
- Urban rail transport is a strategic necessity
- Rail sector gradually liberalised
  - = Public *and* Private operators
  - = Open access
  - = More competition – and a more competitive industry
  - = More private finance
- Public and business demanding a higher quality of service

# The Problems for private investors

- No common rules on debtor insolvency
- No national title or security registries
- **Identifiers unstable (from a creditor's perspective) and inconsistent across the sector**
- Limited legal infrastructure domestically and internationally
- Repossession issues for creditors on debtor default/insolvency
- Public Policy and Public Interest
- Banks' capital requirements and Basel II and III
- Limited commercial tracking of location and status of assets
- Additional security issues and conflict of laws when financed assets cross borders



# Cape Town Convention on International Interests in Mobile Equipment (2001)

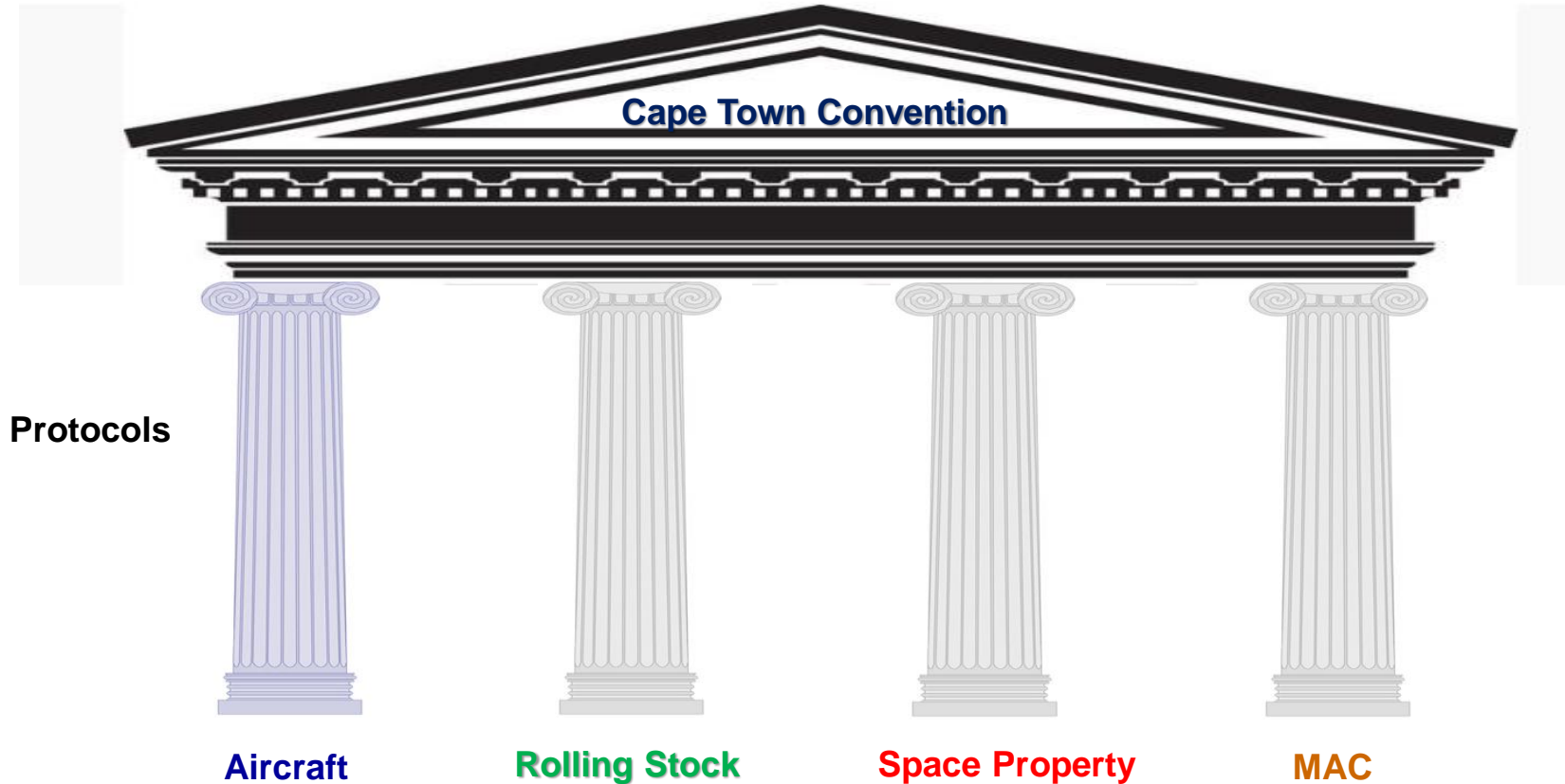
- New global system of international legal rights and priorities for secured creditors
- Common system for enforcing creditor rights upon debtor default or insolvency
- Public registry of security interests, accessible 24/7 online
- Already adopted by 79 States



# The Convention Creates

- A new type of global security interest (the “International Interest”) for designated movable equipment
- Internationally recognised with established priorities
- Secures the:
  - ☐ Lessor under a lease
  - ☐ Creditor under a secured loan
  - ☐ Vendor’s rights under a conditional sale (where title is retained)
- Applies based on seat or domicile of debtor/lessee

# How the Convention works





# Aircraft Protocol

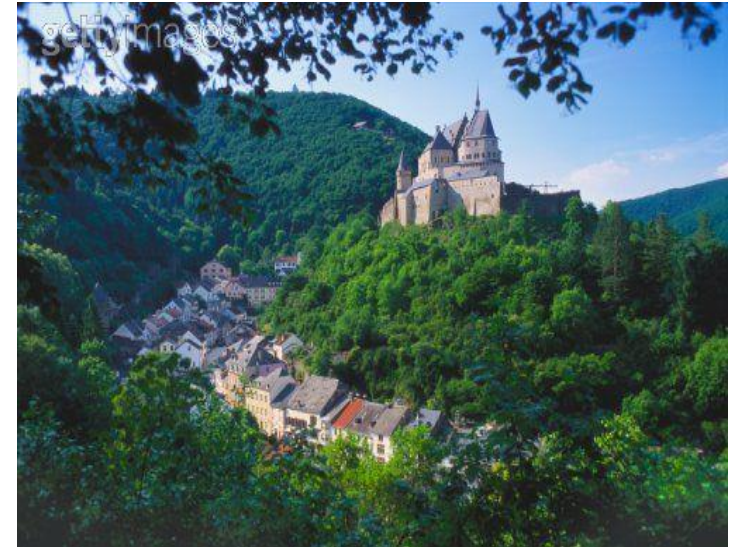
- Adopted at the 2001 Cape Town diplomatic conference
- Applies the Convention to airframes, engines and helicopters subject to some *de minimis* rules
- Applies the Convention also when the Airframe is registered in a contracting state at the time the security interest is created
- Extends the Convention to aircraft sales
- Operating since 2006 – now in force in 76 states plus 1 REIO (European Union)

# Aircraft Protocol

- International registry based in Dublin, Ireland: registrar Aviareto, a special purpose company established by SITA,
- Supervisory Authority: ICAO in Montreal
- Under the Aircraft Sector understanding ECAs reduce their risk premiums by 10% as long as the Protocol is adopted with the recommended declarations
- Over 1 million registrations to date – on aircraft with an estimated value of over \$ 650 Billion
- Aviation Working Group: the Aircraft Protocol will save the air transport industry **\$161 bn** 2009 - 2030

# Luxembourg Rail Protocol

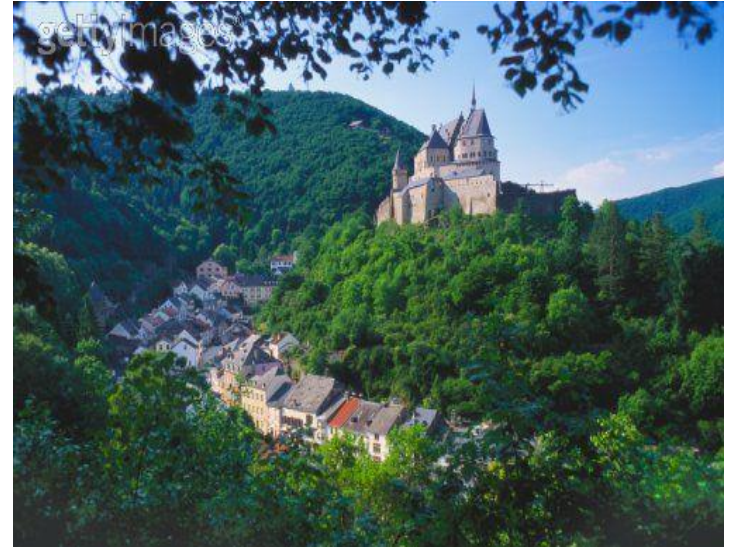
- Diplomatic Conference in Luxembourg in 2007:
- Attended by 42 states and 11 international organisations including 7 African States and SADC
- Sponsoring intergovernmental organisations UNIDROIT and OTIF – OTIF is the secretariat to the Supervisory Authority





# Luxembourg Rail Protocol

- Applies the Cape Town Convention to rolling stock **when debtor is located in a contracting state**
- International registry in Luxembourg
- Registrar responsible to contracting states
- Will introduce global unique identification system for railway equipment



# The Luxembourg Rail Protocol applies to ALL Rolling Stock

- Wherever manufactured, whatever gauge and operability standards
- Broadly defined: “..vehicles movable on a fixed railway track or directly on, above or below a guideway.” This covers:
  - ☐ Inter-urban and urban rolling stock
  - ☐ Specialist boring and other rail mounted equipment
  - ☐ Metro trains and trams
  - ☐ Monorail trains and cable cars
  - ☐ People movers/shuttles at airports
  - ☐ Cranes and gantries at ports
  - ☐ Hyperloop pods

# Unique Vehicle Identification

- Rolling stock must be uniquely identifiable to register interest
- Unique Vehicle Rail Identification System (URVIS) will be established by registry regulations
- First global unique and permanent identification system for rolling stock
- 16-digit number allocated by the Registrar in Luxembourg that will never be re-used
- Affixed permanently to each item of rolling stock by the manufacturer, maintainer or keeper



# The Protocol's Status

- Adopted in 2007 (4 ratifications and active registry required to enter into force – expected during 2020)
- Appointment of Regulis SA (SITA subsidiary) as Registrar in Luxembourg in December 2014
- Ratified by Gabon, Luxembourg and Sweden (and the EU) and Kenya (hopefully) about to ratify
- Signed by Italy, Germany, France, Mozambique, Switzerland and UK - all moving towards ratification
- Also under review by many other governments.

# Benefits

- Removes a significant financial burden from the government
- Liberates public and private operators to obtain private sector finance for rolling stock when needed: no government budgetary constraints nor tied funding
- Opens up non-recourse private financing of existing fleets
- Important part of a PPP strategy
- Key driver for a modal shift from road to rail

# Benefits

- By introducing a common system of rules in contracting states, it protects operators and financiers where rolling stock operates across jurisdictional borders
- Encourages foreign investment in the railways
- Lowers the barriers to entry for new industry participants
- Makes railways more commercial and competitive
- Underwrites operating leases – a key win for the rail sector
- Supports new technology



# Benefits

Some state of the art examples:

**Regenerative  
braking**

**Supercapacitor  
trams**

**Low-noise  
rolling stock**

**Automated  
train operation**

**High-speed  
trains**

**Automatic  
coupling  
systems**

**Artificial  
intelligence and  
platooning**

**Real-time rolling  
stock location  
and diagnostic  
systems**

**Variable-gauge  
rolling stock**

**Positive train  
control/ERTMS  
& other in cab  
signal systems**

**Hybrid, clean  
diesel &  
hydrogen/fuel cell  
locomotives**

# Benefits

- Cheaper finance - reduces bank capital costs/margin and debt financing costs as risks decrease
- Lower Export Credit Agency (ECA) premiums (min. -10%)
- Eliminates complex documentation and structures
- Recent Oxera studies on direct micro-economic savings of the Rail Protocol:
  - **€ 19.4 bn** for 20 European states
  - **€ 13.9 bn** for 9 “1520” states
  - **€ 1.3 bn** for South Africa
- Lowers the barriers to entry for new industry participants
- Macro economic benefits come on top



# Europe

**oxera**  
compelling economics

## FINANCIAL BENEFITS

**20 countries**

**€19.4bn total  
benefits**

Refinancing  
16%

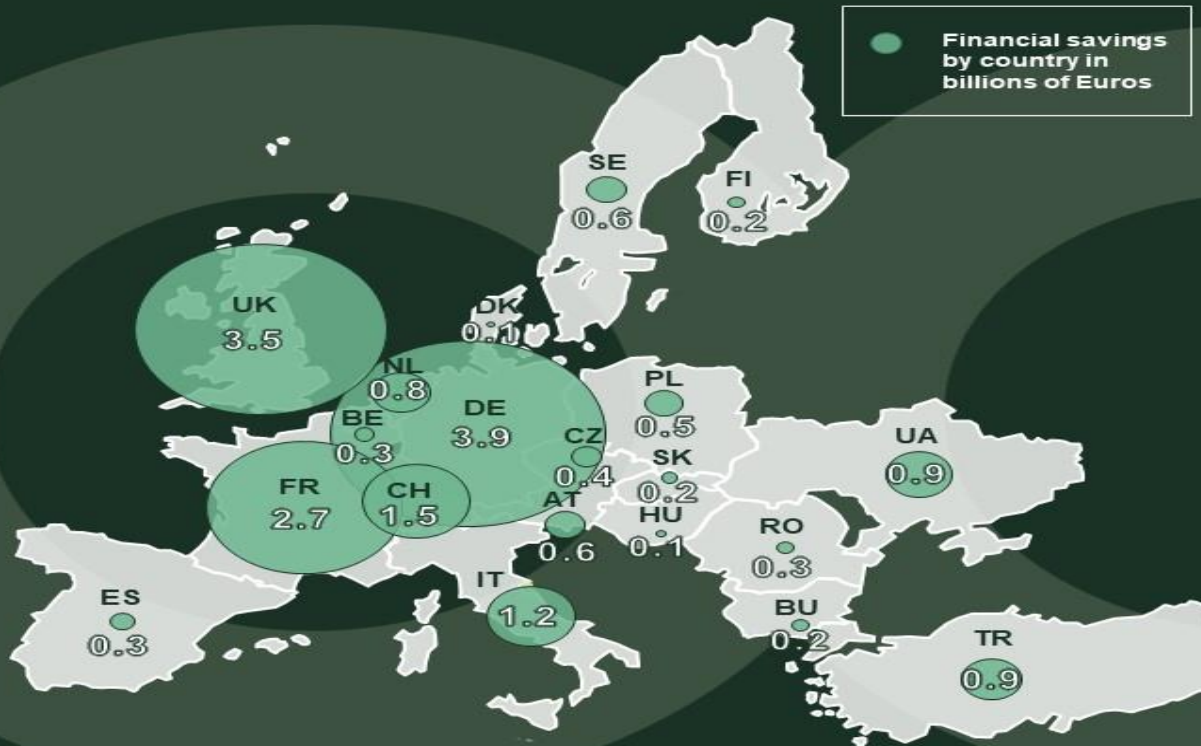


New deliveries  
84%

Freight  
12%



Passengers  
88%





# Benefits

- URVIS
  - ☐ One system applicable worldwide on all rail assets
  - ☐ Real-time tracking of condition and location of assets domestically and in other jurisdictions (and tracks)
  - ☐ Facilitates more efficient asset management
  - ☐ Underwrites customised predictive maintenance
  - ☐ Makes lifetime asset management and costs much easier for operators, manufacturers and financiers

# Benefits

- URVIS
  - ☐ Important for immatriculation – admission to rail system
  - ☐ Will support regional regulatory co-operation and interoperability systems
  - ☐ Defence against fraud on purchasers and creditors of rolling stock
  - ☐ Key element of AI/autonomous operation

# URVIS Open Issues

- Industry to decide
- URVIS number must be “affixed to the item of railway rolling stock” (LRP, Article XIV)
  - ☐ Who affixes?
  - ☐ How is it affixed?
  - ☐ Is it permanent – and how permanent?
- Type, size, location and cost of identifier
- Readability?
- Legal liabilities

# URVIS Open Issues

- Transparency: accessibility to operations, status and location data for rolling stock for
  - ☐ Operator
  - ☐ Creditor(s)
  - ☐ Regulator(s)
  - ☐ Manufacturers
  - ☐ Police and security services?
  - ☐ Press?
  - ☐ Public/competitors?
- Removing access

# URVIS Open Issues

- Does it matter? Yes!
- We need protocols answering these questions
  - a) Simple
  - b) compatible with best industry practice
  - c) At minimal cost
  - d) With maximum flexibility to modify as industry practice changes
- We need advice from experts (Luxembourg Proposal)

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